

Nick Robilotto, Inc. and International Brotherhood of Painters and Allied Trades, Local 201. Case 3-CA-14446

December 21, 1990

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND RAUDABAUGH

On February 22, 1990, the National Labor Relations Board issued its Decision and Order¹ directing Nick Robilotto, Inc. to file all fringe benefit contributions reports due and to remit pension fund contributions as provided in the collective-bargaining agreement with International Brotherhood of Painters and Allied Trades, Local 201, and to make whole its employees for its failure to do so. The United States Court of Appeals for the Second Circuit enforced the Board's Order on May 1, 1990. A controversy having arisen over the amounts due the pension and fringe benefit funds under the terms of the Board's Order, the Regional Director for Region 3, on July 31, 1990, issued a compliance specification and notice of hearing alleging the amount of the contributions due.

In the specification, the Regional Director alleged that during the compliance period, which is covered by the terms of the collective-bargaining agreement in effect from May 1, 1988, through April 30, 1990, the Respondent was obligated to remit payments to the union fringe benefit funds at a specified rate and to pay interest on any delinquent payments. He further alleged that the Respondent belatedly remitted these payments to the union funds and he therefore set forth the amount of interest owing on these delinquent payments. Finally, he alleged that the collective-bargaining agreement also provided for the payment of attorney's fees incurred by a signatory union against an employer in the collection of delinquent fringe benefit contributions and he therefore set forth the amount owed under this obligation.

On October 5, 1990, the General Counsel, by counsel, filed a Motion to Transfer Case and to Continue Proceeding Before the Board and for Summary Judgment and Issuance of Decision and Order, with exhibits attached. The General Counsel submits that the Respondent has failed to file an answer to the compliance specification in accordance with Section 102.56 of the Board's Rules and Regulations and has provided no satisfactory reason for this failure. On October 12, 1990, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent has failed to file a response. The allegations set forth in the motion are therefore undisputed.

¹ 292 NLRB 1279.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record, the Board makes the following

Ruling on Motion for Summary Judgment

Section 102.56 of the Board's Rules and Regulations provides that if the Respondent fails to file an answer to the specification or fails to file an answer in the manner required by Section 102.56(b), the allegations contained in the specification shall be deemed to be admitted to be true and may be so found by the Board without the taking of evidence supporting such allegations, and the Respondent shall be precluded from introducing evidence controverting the allegations. The specification states that unless an answer is filed within 21 days of service, "such allegations shall be deemed to be admitted to be true and Respondent shall be precluded from introducing any evidence controverting them." Further, the undisputed allegations in the General Counsel's memorandum in support of the Motion for Summary Judgment disclose that counsel for the General Counsel, by certified letter dated September 7, 1990, notified the Respondent that unless an answer to the compliance specification was received by September 24, 1990, a Motion for Summary Judgment would be filed.

In his memorandum, the General Counsel also indicated that the Respondent informed him, by letter dated September 17, 1990, *inter alia*, that:

As previously stated, we have been late before and Local 201 always got paid. They have received their money and I feel that I would be willing to pay some late charges, however, I am not going to pay the union's legal bills as legal action was not warranted.

The General Counsel alleges that even assuming *arguendo* that the Respondent's letter was meant to be in the nature of an answer, it is substantively deficient for the reasons discussed in *Solvay Iron Works*, 298 NLRB 1016 (1990). He further contends that this communication constitutes, in substantial part, an admission of the compliance specification allegations.

We agree with the General Counsel that the September 17, 1990 letter from the Respondent does not constitute a proper answer to the compliance specification. The letter fails to specifically admit, deny, or explain the allegations of the specification as required by Section 102.56(b). Accordingly, in the absence of good cause being shown for the failure to file a timely and proper answer in accordance with Section 102.56 of the Board's Rules and Regulations, we grant the General Counsel's Motion for Summary Judgment.

ORDER

The National Labor Relations Board orders that the Respondent, Nick Robilotto, Inc., Albany, New York, its officers, agents, successors, and assigns, shall pay

to International Brotherhood of Painters and Allied Trades, Local 201, \$1065 in attorney's fees and shall pay to the fringe benefit funds \$396.94 in interest owing on delinquent fringe benefits contributions.